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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Richard R. Bourbeau

File: B-238987

Date: September 7, 1990

DECISION

The issue in this case is whether Mr. Richard R. Bourbeau, who is employed as a dual-status United States Army Reserve technician (and whose position is not covered by the Fair Labor Standards Act) may be paid overtime pay under 5 U.S.C. § 5542 (1988) for his participation in various administrative assemblies held in the evenings after his regular work hours from October 1980 to September 1985. His claim was denied by our Claims Group on the basis that the overtime was not ordered or approved by the agency.^{1/} For the following reasons, we affirm our Claims Group's denial of Mr. Bourbeau's claim.

In his appeal Mr. Bourbeau contends that he was induced by his supervisor, who was also his commanding officer, to attend these administrative assemblies, and has submitted further evidence of the exact dates on which he attended them. His appeal, however, does not contain any specific factual evidence of the manner in which he was allegedly so induced. The Army's report on this matter states, in reference to Mr. Bourbeau and another employee, that,

"[they were aware of the] 94th ARCOM policy that prior permission from this headquarters was a necessary requisite for overtime pay. No such permission was sought or granted. Although their commander expressed a desire that they attend

^{1/} Z-2865731, Sept. 10, 1989. We note that Mr. Bourbeau's original claim was received by our Claims Group on October 7, 1985, within the 6-year period provided for in 31 U.S.C. § 3702(b) (1988).

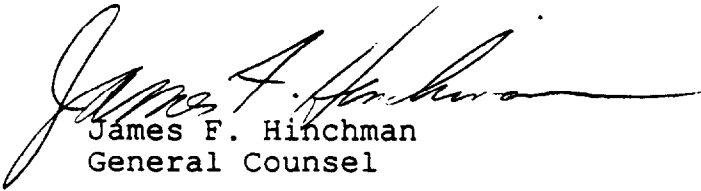
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administrative assemblies neither was ordered to do so."^{2/}

The basic requirement for entitlement to overtime compensation under 5 U.S.C. § 5542 (1988), as more specifically promulgated in the implementing regulation, 5 C.F.R. § 550.111(c) (1990), provides that overtime work must be ordered or approved in writing by an official to whom this authority has specifically been delegated. It has been held that this requirement is met if the employee is "induced" either by the authorized official or with his knowledge and acquiescence to perform overtime work through a reasonable expectation or fear that some penalty will befall him if he does not do so. John W. Wright, B-236750, Nov. 7, 1989, citing Baylor v. United States, 198 Ct. Cl. 331 (1972). However, where there is no more than a "tacit expectation" that the employee will work overtime, such expectation, even if indulged in by the authorized official, does not amount to an official order or approval of overtime. See Ronald L. Barnhart, 68 Comp. Gen. 385 (1989), and cases cited therein.

In his appeal, Mr. Bourbeau has not submitted any specific factual or documentary evidence to show that his supervisor/commanding officer ordered him to work overtime or that he had a reasonable expectation or fear of penalty if he did not do so. The record before us shows only that the supervisor "expressed a desire that [he] attend administrative assemblies" This statement standing alone does not convince us that Mr. Bourbeau's attendance at assemblies was ordered or induced within the meaning of the cases cited above. Thus, under our decisions, he has not met his burden of proving that he is entitled to overtime pay. See 4 C.F.R. § 31.7 (1990).

Accordingly, we affirm our Claims Group's denial of Mr. Bourbeau's claim.


James F. Hinchman
General Counsel

^{2/} We note that Mr. Bourbeau contends that, at the time of the events in question, this 94th ARCOM policy was not in effect and that his supervisor had authority to approve overtime. Rather than resolve this dispute between the Army and Mr. Bourbeau, we will assume, for the purpose of deciding this case, that Mr. Bourbeau's contention is correct.